

CHRISTOPHER ANTHONY JUDD,

Plaintiff,

vs.

BILLY WATKINS, et al.,

Defendants.

THIS MATTER is before the Court on Plaintiff's Motion for Voluntary Dismissal [Doc. 59]. Also pending are several Motions filed by *pro se* Plaintiff. [Docs. 56, 57].

Plaintiff filed this *pro se* civil rights action while he was a pretrial detainee at the Buncombe County Detention Facility.¹ The Amended Complaint passed initial review on claims against several Defendants. [See Docs. 10, 12]. Several Defendants were served and filed an Answer, and the Court entered a pretrial scheduling order. [See Docs. 24, 27, 48].

On November 25, 2020, Plaintiff filed the instant “Motion for Voluntary Dismissal” in which he seeks to dismiss this action pursuant to Rule

¹ Plaintiff was subsequently released from custody.

41(a)(1)(B) of the Federal Rules of Civil Procedure. He states that he has not previously dismissed an action including these same claims; Defendants have not filed a dispositive motion and the deadline to do so has expired; not all Defendants named in the Fourth Amended Complaint have been served; Plaintiff was unable to familiarize himself with the Federal Rules of Civil Procedure during his incarceration; Plaintiff is attempting to prosecute a similar action in this Court which he is not able to prosecute simultaneously with the instant case; and Defendants would not suffer great prejudice should this case be dismissed without prejudice.

Defendants Buncombe County and Buncombe County Sheriff's Deputy Billy Watkins consent to the Motion and only object insofar as Rule 41(a)(1)(B) is inapplicable in this case. Defendants argue that this Motion should be considered pursuant to Rule 41(a)(2) and that dismissal should be granted on terms that the Court considers proper.

Rule 41(a)(1) provides for voluntary dismissal where defendants have not answered or filed dispositive motions or upon the parties' stipulation. Rule 41(a)(1) does not apply to this case because several Defendants have filed an Answer and the parties have not filed a stipulation of dismissal. Rule 41(a)(2) therefore governs. It provides that "an action may be dismissed at

the plaintiff's request only by court order, on terms that the court considers proper....” Fed. R. Civ. P. 41(a)(2).

Plaintiff's Motion will be granted pursuant to Rule 41(a)(2) without prejudice. The other pending Motions are denied as moot. The Clerk of Court will be instructed to terminate and close this action.

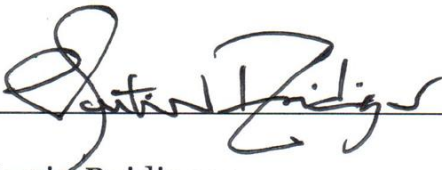
IT IS THEREFORE ORDERED that Plaintiff's Motion for Voluntary Dismissal [Doc. 59] is **GRANTED**, and this case is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the pending Motions [Docs. 56, 57] are **DENIED** as moot.

The Clerk of Court is respectfully instructed to terminate and close this action.

IT IS SO ORDERED.

Signed: December 18, 2020



Martin Reidinger
Chief United States District Judge

